

JAN 11 1941

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 563

MIRIAM G. HOSTETTER, Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States
Circuit Court of Appeals for the Third Circuit.

REPLY BRIEF FOR PETITIONER.

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Subparagraph (4).

Respondent's brief correctly states that "The District Court found from the evidence that the amount claimed as a deduction in this proceeding was not paid by her *within the taxable year*" (R. 190). (Italics ours.)

The opinion of the Circuit Court of Appeals is inaccurate in saying that "The District Court found from the documentary evidence that the estate in fact paid the tax" (R. 202). The District Court made no such finding.

Petitioner has never contended that the mere giving of a note in 1926 entitled her to a deduction in that year. Her contention is that the California inheritance tax was imposed by law upon, and was assessed against,

her right to inherit, as the Circuit Court of Appeals held (Pet. Brief, p. 11); that the Fidelity Title and Trust Company, as executor, loaned her the money with which to pay the tax; that she gave her note for the amount to the trust company and signed an agreement to reimburse the trust company, before the trust company forwarded the money by its check to California to pay the tax, and that by this method she, herself, and not the executor, made the payment.

All this occurred during 1926. If she had negotiated a loan from the banking department of the trust company and used the proceeds of the note to pay the California tax, no one would contend that the tax was not paid until the note was paid.

Petitioner's argument on this point is set forth on pages 14 to 19 of the brief.

Respondent's brief cites *Helvering v. Price*, 309 U. S. 409, which merely held that the amount of a note could not be deducted as a loss until the note was paid.

The excerpts quoted above from the finding of the District Court and the opinion of the Circuit Court of Appeals in our case show clearly that the finding was a mere conclusion based upon written documents and the interpretation of the same.

In *Helvering v. Price*, 309 U. S. 409, this court held that the finding of the Board of Tax Appeals was reviewable by the Circuit Court of Appeals and that the latter's decision was reviewable in this court, saying:

"Respondent insists initially that the transaction in 1932 was considered by the parties as constituting a payment of respondent's liability under the guaranty, and that this payment is a fact found by the Board of Tax appeals and is not open to re-

view. But the findings of the Board disclose the entire transaction, and its legal effect in the application of Sec. 23 (e) of the Revenue Act of 1932, as to the deduction of losses sustained during the taxable year, was reviewable by the Circuit Court of Appeals. Its decision on that point is reviewable here." (412).

Subparagraph (5).

The contention that the record does not show that the claim of the estate was barred, is discussed in Petitioner's Brief, pages 20 to 22.

What the Circuit Court of Appeals held, was that the record did not show that— "*at the time the petitioner filed her claim* for refund the statute of limitations had run so as to bar the estate's claim to a deduction" (R. 202-203). (Italics ours.)

In petitioner's brief (pp. 22-25) it is argued that this construction—that the right of the estate to the deduction must be barred by the Statute of Limitations at the time when the beneficiary's claim is filed—renders subparagraph (5) virtually inapplicable and useless.

Respectfully submitted,

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